

# MORGANTOWN BOARD OF ZONING APPEALS

## MINUTES\*

September 21, 2005

6:30 P.M.

City Council Chambers

**Members Present:** Nick Iannone, Jim Rockis, Bernie Bossio, and Mark Furfari.

**Members Absent:** Kevin Leyden

**Staff Present:** Jim Wood, Planning Director.

### MATTERS OF BUSINESS:

The minutes of August 17, 2005, were tabled to the next meeting

### OLD BUSINESS:

3. **CU05-12 / Panico / 98 South Walnut Street:** Request by Joe Panico for conditional use approval for a multi-family structure in the B-4 District at 98 South Walnut Street. Tax Map #29, Parcel #348; a B-4, General Business District. (The applicant has requested that the case be tabled to the October meeting.)

Motion to table the request by J. Rockis, second by B. Bossio. Motion carried unanimously.

### NEW BUSINESS:

2. **CU05-14 / First Presbyterian Church / 456 Spruce Street:** Request by First Presbyterian Church for a free-standing sign in excess of twelve square feet in the B-4 District at 456 Spruce Street. Tax Map #26, Parcels #248, 249, & 262; a B-4, General Business District.

J. Wood read the staff report stating that First Presbyterian Church would like approval to construct a new freestanding 4' X 8' (32 square feet) sign in the front lawn area of the church at 456 Spruce Street. The monument style sign will be constructed of the same flagstaff stone that is on the church. The sign face will be an internally lit reader board similar in size to the current sign. The current sign, which is approximately fifty years old, is situated closer to the church and is overshadowed by the surrounding landscaping. The current sign measures 29.63 square feet.

J. Wood reported that §115.F.3.b. – *Signs in Pedestrian Shopping Areas*, states, “Signs larger than twelve square feet and free-standing signs shall require Conditional Use approval, subject to conditions set by the Board of Zoning Appeals.” The Design Review Committee did not have a quorum for the August 24<sup>th</sup> meeting, and we have not been able to achieve a majority consensus via other channels of communication.

J. Wood explained that the Board of Zoning Appeals must find that A) the proposed sign is within the fitting character of the surrounding area; B) the proposed sign permits adequate natural light, adequate ventilation and adequate wind flow to adjoining properties; C) the proposed sign creates no traffic hazard by obstructing sign zones or by intensely attracting the driver’s attention away from the

roadway or travel way; D) the proposed sign is aesthetically suitable to the surrounding area; and E) the proposed sign does not cause an undue concentration of signs. Staff recommends approval.

J. Wood advised that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a conditional use permit. Staff added “that the same stone from the existing church will be used in the construction of the sign, and that the sign is similar in size and type as other churches in the area to Finding of Fact #1. Staff asked the BZA to rewrite #2 to state “the church currently has a freestanding sign in excess of twelve square feet , and that the proposed sign will be more fitting with the character of the church.” Staff added to #3, “the proposed sign will not be located in the site vision triangle”; to #4, “the same stone from the church will be utilized to construct the sign”; and to #5, “this will be the only sign for the church and that the current, fifty-year old sign will be removed.”

Susan Easton, representing the church, had a picture of the proposed sign and reiterated the staff report

J. Rockis questioned if the applicant is O.K. with the recommended wording changes to the Findings.

Ms. Easton agreed with the rewording.

N. Iannone asked why the footer was put in along with the conduit.

Dot Duffer, Duffer Sign Company, stated that when they went to assemble the base work, they discovered the permits were not in order.

B. Bossio asked Ms. Duffer if it is normal for the stone support posts not to be considered part of the sign.

Ms. Duffer replied that it is listed as hardware, not part of the sign.

B. Bossio said that he considered the brick as part of the sign and he is looking for consistency on how we measure signs.

J. Wood responded that they do not regulate sign content and have never considered support materials as part of the sign area.

N. Iannone observed that this is an ordinance issue and should be taken up at another time.

B. Bossio asked if they had the right to vote on this without a Design Review Committee recommendation.

J. Wood noted that the Design Review Committee is a recommending body only.

N. Iannone asked for public comments. There being none, the public portion was closed.

Motion by M. Furfari to approve the Findings of Fact as amended by staff, second by J. Rockis. Motion carried unanimously.

Motion by J. Rockis to approve the request, second by M. Furfari. Motion carried unanimously.

3. **CU05-15 / LAI / 400 Forest Avenue:** Request by LAI Architecture for conditional use approval for a multi-family structure in an R-2 District at 400 Forest Avenue. Tax Map #29, Parcel #72 an R-2, Single and Two-family Residential District.

J. Wood advised that the applicant was not in attendance.

N. Iannone asked for public comments.

Frank Ferrell, 26 Outlook Street, spoke about the narrowness of the street, the density of the buildings, and argued at looking at the Findings of Facts from a broader viewpoint.

N. Iannone asked for further public comments. There being none, the public portion was closed.

Motion by J. Rockis to table until the October meeting, second by B. Bossio. Motion carried unanimously.

4. **CU05-16 / Christen / 726 Spring Street:** Request by Linda Christen for conditional use approval to begin a home based business at 726 Spring Branch Road. Tax Map #14, Parcel #99; an R-1A, Single-family Residential District. (The applicant has requested that the case be tabled to the October meeting.)

Motion by B. Bossio to table the request until the October meeting, second by J. Rockis. Motion carried unanimously.

5. **CU05-17 / Papandreas / 329-335 High Street:** Request by George Papandreas for conditional use approval for signage over twelve square feet at 329-335 High Street. Tax Map #26A, Parcel #67; a B-4 General Business District.

J. Wood read the staff report stating that Mr. Papandreas would like façade approval to extend the previously approved awning four feet into Wall Street and then follow the side of the building approximately twelve feet. The applicant is also requesting conditional use approval for four sign friezes approximately 18 square feet each, which will be part of the awning. This amount will equal 72 square feet for the entire building, which is the maximum permitted size for any building in the downtown area. There will also be bands of neon, which are indicated by the horizontal lines on the front and side graphic of the marquee.

J. Wood reported that §115.F.3.b. – *Signs in Pedestrian Shopping Areas*, states, “Signs larger than twelve square feet and free-standing signs shall require Conditional Use approval, subject to conditions set by the Board of Zoning Appeals.” The applicant has also submitted photos of like awnings; these are attached. The applicant has stated that louvers are a possibility to protect the neon lights from vandalism/damage. The applicant is aware that each tenant must meet with the Design Review Committee for signage review. There was not a quorum for the Design Review Committee or consensus on this issue.

J. Wood advised that the Board of Zoning Appeals must find that A) the proposed sign is within the fitting character of the surrounding area; B) the proposed sign permits adequate natural light, adequate ventilation and adequate wind flow to adjoining properties; C) the proposed sign creates no traffic

hazard by obstructing sign zones or by intensely attracting the driver's attention away from the roadway or travel way; D) the proposed sign is aesthetically suitable to the surrounding area; and E) the proposed sign does not cause an undue concentration of signs. Staff recommends approval.

J. Wood clarified that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a conditional use permit. Staff added to Finding of Fact #1, "the proposed signs are in proportion to the building and the façade"; to #4, "the applicant is aware that each business owner must seek approval for each sign design"; and to #6, "that they will be part of the awning."

G. Papandreas, applicant, was available to answer questions.

N. Iannone asked for public comments. There being none, the public portion was closed.

Motion to accept the Findings of Fact as amended by B. Bossio, second by J. Rockis. Motion carried unanimously.

Motion to approve the request by B. Bossio, second by J. Rockis. Motion carried unanimously.

- 6. CU05-18 / Corbett / 250 High Street:** Request by David Corbett for conditional use approval for restaurant-private club license in the B-4 District at 250 High Street. Tax Map #26A, Parcel #133; a B-4, General Business District.

J. Wood presented the staff report stating that David Corbett is opening a full-service restaurant-private club, Mercury, at 250 High Street, the former location of Margarita's Mexican Grille and Spanky's Restaurant. *Article 19.E.4.b. – Private Club Conditional Uses*, includes "In the (B-1), (B-4), and (O-1) Districts, no such applicant may be licensed as a private club under this conditional use that has not been in operation for at least one year as a bona fide restaurant before making application for a license under this conditional use. However, when an applicant owns another bona fide restaurant the same as the one being proposed, the Board of Zoning Appeals may consider the proposed restaurant application on the basis of the existing restaurant, which has been in operation for at least one year."

J. Wood added that *Article 19.E.4.b. – Private Club Conditional Uses*, also includes, "In the (B-4) District, the Board of Zoning Appeals may waive the requirement to be in business one year as a bona fide restaurant when the applicant's written description of the business operations, plus floor plans, demonstrate clearly that the establishment will meet the criteria in the subsection of the ordinance.

J. Wood read that the restaurant will open early in the morning with high-quality baked goods, gourmet coffees, and a European-style breakfast with the option of on-site dining or carry-out. The café menu, served from 11:30 A.M. would include 20 gourmet sandwiches. From 5:30 on, the establishment would offer a tapas-style menu in addition the sandwich menu. The term "tapas" generally refers to "from the sea, from the land, and from the Earth, plus soups and salads" and is characterized by smaller-than-typical portions of foods. The applicant has stated that the wine bar and tapas menu will be available until 1:00 A.M. The applicant is aware that the establishment may not serve liquor after 11:00 P.M.

J. Wood declared that according to the Private Club section of the ordinance, food and non-alcoholic beverages must comprise a minimum of 60% of total gross sales for each month. It is anticipated by the applicant that food and non-alcoholic beverages will comprise more than the requirement. The applicant received permission in April 2001 from the Planning Commission and Board of Zoning Appeals for the restaurant-private club license of Café Bacchus. Café Bacchus has maintained a 78-81% average for food and non-alcoholic beverages each month since opening. The applicant is very familiar with the additional rules governing the conditional use restaurant-private club license. Other sections state that Liquor shall only be served to any person only when accompanied by the serving of a meal prepared on the premises; liquor will only be served to and consumed by persons seated at a table or counter maintained for the principal service of serving meals. Therefore, if the applicant intends to have a “bar” in a portion of the restaurant, liquor may not be served there. Beer and wine may be served at such a bar, but not a liquor drink.

J. Wood stated that it is the task of the Board of Zoning Appeals to determine if they want to allow the waiver of the one-year requirement prior to obtaining liquor capability. The motion to approve this application should include the conditions as listed in Article 19.E.4.b. – *Private Club Conditional Uses*, which include the requirements governing the operation of the restaurant-private club.

J. Wood clarified that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance. Staff added to Finding of Fact #1, “no new exterior construction that will have the effect of enlarging the building, will take place; the building is in the B-4 District”; and to #5 that “there will not be exterior construction that will result in enlargement of the building.

David Corbett, applicant, defined tapas.

B. Bossio asked if there had been any incidents with the ABCC during the four years of doing business.

Mr. Corbett replied no, they are more of a restaurant scene than a bar scene.

N. Iannone asked for public comments.

Terri Cutright, Main Street Morgantown, has full confidence in David and this restaurant. She also advised of future changes to be made to the liquor ordinance.

N. Iannone asked for further public comments. There being none, the public portion was closed.

Motion to accept the Findings of Fact as written by B. Bossio, second by M. Furfari. Motion carried unanimously.

Motion to approve the request by J. Rockis, second by B. Bossio. Motion carried unanimously.

7. **V05-09 / Morlino / 2105 University Avenue:** Request by Bill Morlino for variance approval from the *Table 2, Residential Development Standards* for property located at 2105 University Avenue. Tax Map #20 Parcel #130; a B-1, Neighborhood Business District

J. Wood read the staff report stating that Mr. Morlino would like to demolish a 1920's nonconforming structure located at the corner of University Avenue and Second Street; and rebuild a new structure in its place. For the new structure, the applicant needs a side and rear yard variance, as well as a variance for minimum lot size. The required side yard is ten feet in the B-1 District. The applicant is proposing a one-foot variance on the western side of the structure and a 6.05-foot variance on the opposing side. The required rear yard setback is 25 feet in the B-1 District. The applicant is proposing a nine-foot setback, a variance of 16 feet. Also, the required lot size for six two-bedroom units is 5,400 square feet. The applicant has 3,980.81 square feet of property.

J. Wood declared that the lot coverage is approximately 31%. No further variances are needed. The current structure has a rear yard setback of 2.5 feet, a front yard setback of 39 feet, a western side yard setback of 17.42 feet and an eastern, facing University Avenue, of 3.83 feet. The following table is designed to aid in fact finding.

<b>STANDARD</b>	<b>REQUIRED</b>	<b>PROPOSED</b>	<b>EXISTING</b>	<b>VARIANCE</b>
Minimum Lot Size	6 2-bedroom units – 5,400 sq. ft.	3,980.81 sq. ft.	Nonconforming 1900 sq. ft.	1419.19 sq. ft.
Rear Yard	25 ft.	9 ft.	2.5 ft.	16.ft.
Side (West)	10 ft.	9 ft.	17.42 ft.	1 ft.
Side (East)	10 ft.	3.95 ft.	3.83 ft.	6.05 ft.
Front	25 ft.	32.9 ft.	32.9 ft.	None
Lot Coverage	35% maximum	31%	26%	None

Although the dwelling is addressed on University Avenue, the ordinance states that the front lot line, for a corner lot, is the narrowest street frontage. Therefore, Second Street would actually be the front of the property.

J. Wood read that Mr. Morlino has stated that the existing structure has historically had no structured parking area. Currently, the nonconforming structure is registered as two apartments with one six-bedroom and one one-bedroom. The parking requirement is three spaces. The proposal is for six two-bedroom units, which requires nine parking spaces. Therefore, the applicant only has to provide six parking spaces. If approved, the project would have to go through Technical Review. The applicant is currently checking with BFI for dumpster placement.

J. Wood advised that in February 2002, the Board approved variances for David Kelly, for three substandard parcels that were deficient in size by 2,000 square feet per parcel, at 717 Grant Avenue. On one of the parcels, Mr. Kelly was approved to locate a duplex two feet from one side lot line ( a variance of three feet) and eight feet from the rear lot line (a variance of twelve feet) in order to move the structure to a location that would avoid an existing sewer line. Antonio Sellaro, in September 2002, was approved for a variance from the front and rear setbacks at 712 Grant Avenue. The applicant was approved to locate a structure three feet from the rear line at one corner of the building. Jim Rockis received approval in June 2004 to develop 14 one-bedroom dwelling units with 18 off-street parking spaces on the property located at 2126 and 2134 University Avenue. Since the development as proposed did not meet the setback and lot area requirements, the following variances were required: front yard, 19 feet; side yard, 3 feet; and lot area, 1,091 square feet. Bill Bjorkman, in February 2003, was approved for a front yard setback of 16 feet, a nine foot variance, at 2577-2585 University Avenue.

J. Wood explained that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance. Staff believes the request is reasonable and commends Mr. Morlino in attempting to improve his property. Staff added to Finding of Fact #1 “adjacent properties are utilized as multi-family dwellings; the applicant will improve the area with a new structure; and that the size of the parcel inhibits the applicant from building a structure that is financially feasible.”

Bill Morlino, applicant, was available to answer questions.

J. Rockis questioned how the trash was to be handled.

Mr. Morlino stated the current dumpster would remain.

J. Wood responded that the site plan shows no dumpster, just six parking spaces all along the Second Street property line.

Mr. Morlino said that, at the corner of Second Street, there is a 9’9” section as backing out; the dumpster would sit on the very corner of the lot.

N. Iannone stated they are not in favor of providing parking in the front of the building.

J. Wood asked if the front of the building faced University Avenue.

Mr. Morlino stated that it will face Second Street.

N. Iannone asked if the building could be pulled out toward Second Street and the parking put behind and what provision there is for landscaping.

Mr. Morlino said the landscaping would be along the wall along University Avenue.

N. Iannone asked for public comments. There being none, the public portion was closed.

M. Furfari noted the current house is facing University Avenue, why is it being turned to face Second Street.

J. Wood replied that, by ordinance definition, the front is always the shortest property line on a corner lot, for determining setbacks, but that has no bearing on which way the building faces.

Mr. Morlino had never thought about it facing University Avenue.

N. Iannone suggested that if it faces University Avenue, perhaps parking can be behind the building.

J. Wood said that if the building is oriented to face University Avenue, tucked into the corner of University and Second Street, if you would agree to look at that, the Board could approve variances for that to happen, and if it is not feasible, the applicant could come back and get it modified. Discussion ensued about possible parking options.

J. Wood noted that the exterior stairs could go to the property line, but not over the property line.

J. Rockis suggested that the current plan is probably the best use for the property.

Mr. Morlino stated that if the Board would approve the plan as is, he would work it out with Jim. J. Wood said they could approve the plan as it is and also approve a three-foot setback from University Avenue and Second Street if you decide to turn the building and the parking works out.

B. Bossio asked Mr. Morlino if he was opposed to tabling this since nothing would happen before May.

Mr. Morlino said that he will come back. His only question was about the exterior stairs that he wants to keep.

Motion to table the request by J. Rockis, second by B. Bossio. Motion carried unanimously.

- 8. V05-10 / Knight / Webster Avenue:** Request by Laird Knight for variance approval from §14.B.4.b, Accessory Buildings and Uses, and from the *Table 2, Residential Development Standards* for property located on Webster Avenue. Tax Map #41 Parcel #165; an R-1A, Single-family Residential District.

J. Wood read the staff report stating that Mr. Knight would like permission to build a house within 13 feet of the rear property boundary, a variance of seven feet. Although Marlinton Avenue at the rear of the lot has a thirty foot right of way, the cartway is only ten feet wide. The City Engineer has stated that the road would not be widened in the foreseeable future.

J. Wood stated that the second request is for approval from the zoning ordinance, §14.B.4.b, Accessory Buildings and Uses, which states, “An accessory building, or garage, may be located in the rear quarter of the lot, but shall not be closer than three feet to a side lot line, nor more than 18 feet in height. A private garage may be connected to the residence by a breezeway, but not more than ten feet from the dwelling.”

J. Wood clarified that the applicant is requesting to have a zero side and rear yard for the detached garage. Although the ordinance does not discuss a rear yard setback for accessory buildings, it has been determined by long-standing precedent that five feet is an acceptable setback. Because of the unused area of Marlinton, the proposed garage will be approximately 14 feet away from the paved area of the avenue. With concerns from the neighbors regarding roof eave encroachment, the applicant has further stated that the garage will have a saltbox style roof and will not encroach into the adjacent property. Please note that the garage will be adjacent to the neighboring privacy fence. The applicant is requesting these variances because of the steep slope of the property. The proposed house and garage meet all other zoning regulations.

J. Wood advised that staff believes the applicant’s responses are well thought-out and are of sufficient detail for the Board to come to an opinion. Staff has concerns about placing the accessory building so close to the side and rear lines, due to maintenance issues, particularly along the side property line.

Laird Knight, applicant, appreciates the concerns about the issue of maintenance, but he is trying to make the best use of the property and trying to avoid three feet of wasted space. The overall reasoning is based on the slope of the lot.

N. Iannone asked for public comments.

Greg Nair, 329 Webster Avenue, spoke about keeping a three-foot setback, but offered that he would settle for a 1.5' variance to allow a 1.5 foot side setback.

N. Iannone asked for further public comments. There being none, the public portion was closed.

The Findings of Fact were considered individually and the wording "if a 1.5 foot setback is maintained instead of a zero setback" was added to #3.

Motion to accept the Findings of Fact as amended by J. Rockis, second by B. Bossio. Motion carried unanimously.

Motion to approve the request with the amendment to require a 1.5' side setback for the garage (a 1.5' variance) by B. Bossio, second by J. Rockis. Motion carried unanimously.

#### **OTHER BUSINESS:**

**Public Comments:** NONE.

**Staff Comments:** NONE.

#### **ADJOURNMENT**

**\*No videotape was made of this meeting.**